

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
EARL A. TENLEY, SR.,

Appellant,

v.

CHELAN COUNTY,

Respondent,

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY and
SLADE GORTON, ATTORNEY GENERAL,

Intervenors.

SHB No. 78-51

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal from the denial of a substantial develop-
ment permit by Chelan County, having come on regularly for formal
hearing on the 26th of February, 1980, in Wenatchee, Washington,
and appellant Earl A. Tenley, Sr., representing himself, and
respondent Chelan County represented by David A. Kurtz, Deputy
Prosecuting Attorney and intervenors appearing through Robert V.
Jensen, Assistorney General, with Nancy E. Curington, hearing officer

1 presiding, and the Board having considered the exhibits, records
2 and files herein, and having reviewed the Proposed Order of the
3 presiding officer mailed to the parties on the 6th day of March,
4 1980, and more than twenty days having elapsed from said service; and


5 The Board having received exceptions to said Proposed Order and
6 the Board having considered the exceptions and denying same, and
7 being fully advised in the premises, NOW THEREFORE,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
9 Order containing Findings of Fact, Conclusions of Law and Order
10 dated the 5th day of March, 1980, and incorporated by reference
11 herein and attached hereto as Exhibit A, are adopted and hereby
12 entered as the Board's Final Findings of Fact, Conclusions of Law
13 and Order herein.

14 DATED this 23rd day of June, 1980.


15 SHORELINES HEARINGS BOARD

16 
17 NAT W. WASHINGTON, Chairman

18 
19 DAVID AKANA, Member

20 
21 WILLIAM A. JOHNSON, Member

22 
23 ROBERT S. DERRICK, Member

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25 DELMON ANDERSON, Member

26
27 FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER

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Chelan County Courthouse
Wenatchee, WA 98801

Robert V. Jensen
Assistant Attorney General
Department of Ecology
St. Martin's College
Olympia, WA 98504

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Chelan County Commissioners
Chelan County Courthouse
Wenatchee, WA 98801

Trish Ryan
TRISH RYAN
SHORELINES HEARINGS BOARD

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STATE OF WASHINGTON

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DEPARTMENT OF ECOLOGY, and
SLADE GORTON, ATTORNEY GENERAL,

Intervenors.

SHB No. 78-51

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

This matter, the appeal from the denial of a substantial development permit by Chelan County, came before the Shorelines Hearings Board, Del Anderson, Member, in Wenatchee, Washington on February 26, 1980. Nancy E. Curington, Administrator, presided.

Appellant represented himself. Respondent Chelan County was represented by David A. Kurtz, Deputy Prosecuting Attorney.

EXHIBIT A

Intervenors were represented by Robert V. Jensen, Assistant Attorney General.

Having heard the testimony, having examined the exhibits, having considered the parties' contentions and arguments, and being fully advised, the Shorelines Hearings Board makes these

FINDINGS OF FACT

I

This matter arises from the denial of an application by appellant for a shoreline substantial development permit by Chelan County for a landfill along the Wenatchee River, a shoreline of statewide significance. Appellant appealed such denial to this Board.

II

Appellant owns property along the Wenatchee River outside of the town of Leavenworth, in Chelan County. He has approximately 400' to 600' of river frontage. He resides on his property.

III

During the summer of 1976, the assistant planner for Chelan County wrote a letter to the appellant concerning a possible violation of the Shorelines Management Act due to a small amount of debris being dumped into the Wenatchee River on the appellant's property. In August of 1978, a neighbor expressed concern to the County regarding debris being dumped near the river on the appellant's property. The assistant planner contacted the appellant and told him that any further dumping would require a shorelines substantial development permit. He understood from his conversation with the appellant that

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 there would be no further dumping along the river's edge. However,
2 after another complaint, the assistant planner visited appellant's
3 property and observed that further debris, consisting of fine soil,
4 vegetative debris, concrete sewer, tiles and asphalt, had been dumped
5 at the site. There was no retaining wall or other mechanism to deter
6 erosion. Appellant was notified by letter that he was being cited for
7 violation of the Chelan County Shorelines Master Program (hereinafter
8 "CCSMP"). Appellant on September 13, 1978 applied for a substantial
9 development permit for the dumping which had already occurred. On
10 November 13, 1978 the County denied the permit.

11 IV

12 Appellant's property is located within an area designated by the
13 CCSMP as a Conservancy Environment. The Conservancy Environment is
14 described as "an area characterized by a potential for diffuse outdoor
15 recreation activities, timber harvesting on a sustained yield basis,
16 passive agricultural uses such as pasture and range lands, and other
17 related development." Section 7.2.24.5. The CCSMP states, "Landfill
18 is the creation of dry upland area by filling or depositing soil or
19 other materials in water areas or wetlands. Landfills also occur to
20 replace shorelands lost to natural erosive processes." Section 11.

21 V

22 Any Conclusion of Law which should be deemed a Finding of Fact is
23 hereby adopted as such.

24 From these Findings, the Board comes to these

25 CONCLUSIONS OF LAW

26 PROPOSED FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

I

The Board has jurisdiction over the persons and over the subject matter of this proceeding.

II

The substantial development permit application at issue herein is tested for consistency with the CCSMP and the provisions of the Shoreline Management Act. (SMA) RCW 90.58.140(2)(b).

III

CCSMP policies regarding landfills discourage landfills for the express purpose of creating new land for non-shoreline related uses. Landfills may be permitted in a Conservancy Environment if landfills conform to regulations of the Urban Environment, including provisions for the maintenance of water quality and prevention of erosion.¹

In this case, the subject of the application has in fact already been completed; there is no provision for insuring high water quality or for deterring erosion of the fill materials. Consequently, the application for a substantial development permit was properly denied by Chelan County.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

22.12 Landfills shall consist of clean materials with a minimum potential for degrading water quality. Landfills shall be protected against erosion with retaining walls or other mechanisms to deter erosion or in the case of fills above the ordinary high water line by adequate retaining vegetation established during the first growing season following completion of the landfill.

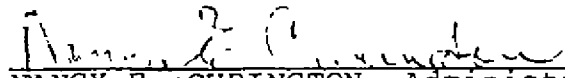
1 From these Conclusions the Board enters the following

2 ORDER

3 The denial of the shorelines substantial development permit by
4 Chelan County is affirmed.

5 DATED this 5th day of March, 1980.

6 SHORELINES HEARINGS BOARD

7 
8 NANCY E. CURINGTON, Administrator